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ABSTRACT

Cases related to school finance, in which decisions were handed down in 1982, are reviewed in this chapter. It is observed that the constitutionality of existing state school finance programs was upheld in New York, Colorado, and Georgia, and that litigation was prevalent in the areas of taxation for schools and uses of school revenue. Issues addressed under the heading of Sources and Allocation of Public School Funds include state school finance programs, federal funds for education, and school fees. Discussed under the heading of School Tax Issues are cases involving power to tax, relationship of school districts to other government units, and uses of revenue. (MJL)

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FINANCE

Richard A. and Daniel M. Rossmiller

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6.0 INTRODUCTION

During the period of time covered by this review, the highest court in each of three states (New York, Colorado and Georgia) upheld the constitutionality of existing state school finance programs in those states, in two instances reversing decisions by lower courts. Issues related to taxation for schools and the uses of school revenue also were prevalent.*

6.1 SOURCES AND ALLOCATION OF PUBLIC SCHOOL FUNDS

6.1a State School Finance Programs

The United States Supreme Court, in a divided opinion, affirmed lower court decisions declaring unconstitutional a Texas statute denying any state funds for the education of children not legally

* Editor's note: Cases dealing with public funds for private schools and funds for special education are reviewed in Chapter 4 of the *Yearbook*.

admitted into the United States.[1] The statute in question[2] limited state aid to children who were citizens of the United States or legally admitted aliens. It also provided that school boards could deny enrollment in public schools to children not legally admitted to the country. Suit was brought on behalf of alien children who were excluded from the public schools of the Tyler Independent School District. The federal district court ruled in favor of the plaintiff children,[3] as did the Fifth Circuit Court of Appeals.[4]

The Supreme Court ruled that illegal alien children were entitled to the benefits of the equal protection clause which applies to all persons, including those in the country illegally. The Court also held that a statute discriminating against undocumented alien children could not be considered rational unless it furthered some substantial goal of the state. The Court commented:

> Section 21.031 imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation. In determining the rationality of § 21.021, we may appropriately take into account its costs to the Nation and to the innocent children who are its victims. In light of these counterveiling costs, the discrimination contained in § 21.031 can hardly be considered rational unless it furthers some substantial goal of the State.[5]

The Court ruled that the undocumented status of the children did not establish a sufficient rational basis for denying them the benefits of education. The Court could find no national policy that would justify the state in denying the children an elementary education, and concluded that "whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation."[6] The Court therefore found that "[i]f the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here."[7]

1. Plyler v. Doe, 102 S. Ct. 2382 (1982).
2. TEX. EDUC. CODE ANN. § 21.031.
3. Plyler v. Doe, 458 F. Supp. 569 (E.D. Tex. 1978).
4. Doe v. Plyler, 628 F.2d 448 (5th Cir. 1980).
5. Plyler, *supra*, note 1 at 2398.
6. *Id.* at 2402.
7. *Id.*

New York's highest court upheld the constitutionality of that state's school finance program,[8] thus overruling previous decisions by lower courts in New York.[9] This action had been originated by school boards and students in "property-poor" school districts. The action later was joined by intervenors representing the state's largest cities, New York, Buffalo, Rochester, and Syracuse. The trial court held that New York's state aid program violated both the state and federal constitutions.[10] Upon appeal, it was determined that the state aid program did not violate the federal constitution but did violate the New York Constitution.[11]

The Court of Appeals of New York rejected the claim by the intervenors that metropolitan overbuden must be remedied by compensatory increases in state aid to city school districts. It noted with approval the opinion of the lower court that it was beyond the power of the court to determine whether budgets had been fairly divided between competing municipal services, or whether the available funds had been used wisely by the school districts.

With regard to the question of whether New York's constitution was violated by the state school aid program, the court addressed first the question of the standard to be applied. Citing previous United States Supreme Court and New York decisions, the court reiterated that the rational basis test was the proper standard for review in this case. It noted that stricter scrutiny is appropriate when intentional discrimination against a class of persons is claimed, but the claim of discrimination in this instance was between property-poor and property-wealthy school districts. The court found no authority to support the claim that discrimination between units of local government would call for other than rational basis scrutiny. The court concluded that "the justification offered by the State—the preservation and promotion of local control of education—is both a legitimate State interest and one to which the present financing system is reasonably related."[12] The court noted the existing system permits the instructional program in the districts throughout the state to reflect the needs and desires of the community. It noted:

8. Board of Educ., Levittown Union Free School Dist. v. Nyquist, 439 N.E.2d 359 (N.Y. 1982).
9. *See* THE YEARBOOK OF SCHOOL LAW 1982 (P. Piele, ed.) [hereinafter cited as YEARBOOK 1982] at 212-13.
10. Board of Educ., Levittown Union Free School Dist. v. Nyquist, 408 N.Y.S.2d 606 (N.Y. Sup. Ct. 1978).
11. Board of Educ., Levittown Union Free School Dist. v. Nyquist, 443 N.Y.S.2d 843 (N.Y. App. Div. 1981).
12. Board of Educ., Levittown Union Free School Dist. v. Nyquist, 439 N.E.2d 359, 366 (N.Y. 1982).

> Any legislative attempt to make uniform and undeviating the educational opportunities offered by the several hundred local school districts—whether by providing that revenue for local education shall come exclusively from State sources to be distributed on a uniform per pupil basis, by prohibiting expenditure by local districts of any sums in excess of a legislatively fixed per pupil expenditure, or by requiring every district to match the per pupil expenditure of the highest spending district by means of local taxation or by means of State aid (surely an economically unrealistically hypothesis)—would inevitably work the demise of the local control of education available to students in individual districts.[13]

Thus, the court held that the existing state aid program did not violate the equal protection requirements of the New York Constitution.

The court noted that article XI, section 1 of the New York Constitution adopted in 1894 does not require that the education available in every district be equal or substantially equal. It interpreted the term "education" to connote a sound basic education and determined that the constitutional requirement was being met under the existing system. In concluding its discussion, the court stated:

> Because decisions as to how public funds will be allocated among the several services for which by constitutional imperative the Legislature is required to make provision are matters peculiarly appropriate for formulation by the legislative body (reflective of and responsive as it is to the public will), we would be reluctant to override those decisions by mandating an even higher priority for education in the absence, possibly, of gross and glaring inadequacy—something not shown to exist in consequence of the present school financing system.[14]

The Supreme Court of Georgia held that state's sytem of financing public education did not violate the equal protection provisions of the state constitution.[15] Parents, children, and school officials who resided in low-wealth school districts alleged that the state school aid program violated the equal protection provisions of the Georgia Constitution and deprived children of an adequate education. The trial court found that the state aid system violated the equal protection provisions of the constitution but that it did not deprive children of an adequate education. The Georgia Supreme Court, after reviewing the history of the constitutional provisions for education, concluded:

13. *Id.* at 367.
14. *Id.* at 369.
15. McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981).

> The Georgia Constitution thus contains very specific provisions relating to the obligation of localities to impose a tax for the maintenance of the public schools and general provisions imposing a duty on the state and General Asembly to provide its citizens an "adequate education." Nowhere in Article VIII of the Constitution is there any express statement as to the obligation of the state to equalize educational opportunities.
>
> In view of the foregoing, we must conclude that the "adequate education" provisions of the constitution do not restrict local school districts from doing what they can to improve educational opportunities within the district, nor do they require the state to equalize educational opportunities between districts.[16]

The court also held that the state school finance program did not violate the equal protection provisions of the constitution. The court found that education is not a fundamental right under the state constitution and thus the public school finance system must only satisfy the "rational relationship" test. It noted the Georgia system preserves the idea of a local contribution and concluded:

> The fact that the state has not *funded* a large-scale equalization plan does not render the current public school finance system invidiously discriminatory. In terms of equalization the system is a poor one. However, the system does bear some rational relationship to legitimate state purposes and is therefore not violative of state equal protection....
>
> Our holding that the current system of financing public education in Georgia is not unconstitutional should not be construed as an endorsement by this court of the status quo. Constitutions are designed to afford *minimum* protections to society. Plaintiffs have shown that serious disparities in educational opportunities exist in Georgia and that legislation currently in effect will not eliminate them. It is clear that a great deal more can be done and needs to be done to equalize educational opportunities in this state. For the present, however, the solutions must come from our lawmakers.[17]

The consitutionality of Colorado's state school finance program was upheld by that state's highest court.[18] The case was brought by children residing in sixteen school districts who claimed that because they lived in property-poor school districts, they received an inadequate education because the state did not provide sufficient funding to compensate

16. *Id.* at 164.
17. *Id.* at 168.
18. Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

for deficiencies in local wealth. Thus, they claimed they were denied the equal protection required by the Colorado Constitution and the "thorough and uniform" system of public schools required by article IX, section 2 of the state constitution. The trial court ruled in favor of the plaintiffs, holding the existing school finance program violated both the thorough and uniform and equal protection requirements of the constitution. The Supreme Court of Colorado disagreed, holding that the state school finance system did not violate either the thorough and uniform provision or the equal protection provision, and also upheld the state's method of capital outlay financing. The court rejected the argument that low-wealth school districts composed a "suspect class," noting:

> *First*, the criteria for a suspect class cannot be met by a school district regardless of the merits ... the equal protection clause emobides personal rights, and by its very terms is limited to individuals....
>
> *Second*, there is no distinct and insular "class" of poor persons as required for equal protection analysis. Under this analysis, we define a "class" as being a group marked by common attributes or characteristics. Here, however, the alleged class of "poor persons," while possibly linked by their respective income levels, have no common attribute relative to Colorado's school financing system. The evidence does *not* show that poor persons in Colorado are concentrated in low-property wealth districts, or that they uniformly or consistently receive a lower quality education, or that the districts in which they reside uniformly or consistently expend less money on education.[19]

Having determined that no suspect class or fundamental right was involved in the case, the court then turned to the question of whether the Colorado public school finance system rationally furthers a legitimate state purpose and stated:

> We find that utilizing local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over public schools. The use of local taxes affords a school district the freedom to devote more money toward educating its children than is otherwise available in the state-guaranteed minimum amount. It also enables the local citizenry greater influence and participation in the decision making process as to how these local tax dollars are spent. Some communities might place heavy emphasis on schools,

19. *Id.* at 1020.

while others may desire greater police or fire protection, or improved streets or public transportation. Finally, local control provides each district with the opportunity for experimentation, innovation, and a healthy competition for educational excellence.

Although we recognize that due to disparities in wealth, the present finance system can lead to the low-wealth district having less fiscal control than wealthier districts, this result, by itself, does not strike down the entire school finance system....

Although all educational financing cases are *sui generis* in the sense that the alleged deprivation is relative rather than absolute, here, we find no discrimination, invidious or otherwise, in a system that applies a uniform subsidy formula on a statewide basis, while concurrently promoting community control by means of local taxation.[20]

The court then turned to the question of whether the state school financing system violated the "thorough and uniform" requirement of the constitution. The plaintiffs had argued that this clause requires the state to provide equal educational opportunity to school children. The court disagreed, ruling that the constitutional requirement

> is satisfied if thorough and uniform educational opportunities are available through state action in each school district. While each school district must be given the control necessary to implement this mandate at the local level, this constitutional provision does not prevent a local school district from providing additional educational opportunities beyond this standard. In short, the requirement of a "thorough and uniform system of free public schools" does not require that educational expenditures per pupil in every school district be identical.[21]

A fifth appeal was heard in *Serrano v. Priest*[22] on behalf of plaintiff's counsel who sought to enforce a trial court judgment awarding attorney's fees. Following the plaintiff's successful constitutional challenge to the California public school financing system, an order was filed directing various state defendants to pay $800,000 in fees to the plaintiff's counsel. The order awarding attorney's fees was affirmed by the California Supreme Court, which held that the trial court had acted within the proper limits in granting the fee award.[23] After unsuccessful attempts to obtain voluntary payment of the award, counsel

20. *Id.* at 1023.
21. *Id.* at 1025.
22. 182 Cal. Rptr. 387 (Cal. Ct. App. 1982).
23. Serrano v. Priest, 569 P.2d 1303 (Cal. 1977).

sought an order directing the defendants (the state treasurer, the state superintendent of public instruction and the state controller) to satisfy the earlier judgment. The trial court granted the motion and entered an order which was at issue in this fifth appeal.

The order directed the state controller to pay the $800,000 award, plus interest, from funds appropriated by the legislature for the "operating expenses and equipment" of the department of education, superintendent of public instruction, and state board of education. The trial court also ordered the defendants to set aside from the 1979-80 "operating expenses and equipment" appropriation a sum sufficient to satisfy the judgment with interest. The state superintendent and state controller appealed and the supreme court stayed that portion of the trial court order requiring that funds be set aside after finding that nearly all of the appropriation had been either disbursed or earmarked for the payment of contracts.

However, in June, 1981, the California Supreme Court affirmed a trial court payment order for attorney's fees in another case in which an order directed the state controller to pay $25,000 plus interest from funds appropriated to the department of health services.[24] Shortly after the decision in *Mandel*, counsel for *Serrano* moved that the court of appeals dismiss the defendant's appeal and summarily affirm the payment order at issue. The court vacated the supreme court's stay of the "set aside" order and summarily affirmed the trial court's order for payment of the attorney's fee. It also disposed of two remaining issues. The court recognized that only the Budget Act of 1979 was in effect when the trial court entered its payment order in February, 1980, and that the trial court had no authority to order the payment of the award from funds not yet appropriated by the legislature. The court found the holding in *Mandel* made the subsequent 1980-81 and 1981-82 "operating expense appropriations" for the department of education available for payment of the attorney's fee award even if the 1979-80 appropriation had been exhausted. The court also invalidated certain sections of the 1980 and 1981 Budget Acts which attempted to prohibit the use of funds appropriated in these bills for payment of court-awarded attorney fees. The court found these sections invalid in so far as they attempted to readjudicate the 1975 judgment citing the "separation of powers doctrine" set forth in article III, section 3 of the California Constitution.

In another California case, this one stemming from actions taken in the aftermath of Proposition 13, it was determined that an item in a

24. Mandel v. Myers, 629 P.2d 935 (Cal. 1981).

school district's 1977-78 budget labeled "apropriation for contingencies" was not a "reserve" and the school district's state aid was reduced accordingly.[25] Shortly after Proposition 13 was adopted, the legislature passed an emergency measure known as the "bail-out" bill which appropriated several billion dollars in state funds for the use of local agencies, including school districts, and provided a distribution formula by which aid to school districts was to be determined for the 1978-79 fiscal year. Under the terms of the bill funds which had not been reserved prior to June 6, 1978, and which exceeded five percent of the district's general fund total revenue, would reduce the amount of state funds otherwise allocable to the district. The California Department of Education had determined the district's budget contained an "appropriation for contingencies" with an unexpended ending balance. The district claimed the funds in question constituted a "contingency reserve" and thus were immune from the reduction formula. The trial court concluded the account was an annual appropriation account, not a "reserve," within the meaning of the bail-out bill. Upon appeal, the trial court's ruling was affirmed because there was substantial evidence to support its finding that the account in question was an "appropriation" rather than a "reserve." Thus, it was held that the department of education's determination reducing the district's state aid was correct.

A New York school district sought a determination of whether it was obligated to repay money it had received from the state's health insurance reserve receipts fund.[26] The district maintained that the portion of the statute obligating it to repay money it received from the fund had been repealed by implication by another statute enacted in the same legislative session. The trial court ruled in favor of the district but the decision was reversed on appeal. The court pointed out that the doctrine of repeal by implication is strongly disfavored and is not to be invoked unless the two statutes in question are clearly repugnant. The court could find no repugnancy between the two statutes, pointing out that they were not only enacted at the same session, but were passed on the same day of the session.

The same statutes were at issue in another New York case in which a school district sought a declaratory judgment that would permit it to withdraw from the state health insurance plan without a consequent loss of state aid.[27] The district's motion was denied, with the court holding that one statute did not repeal another by implication and that

25. Edison School Dist. v. Ross, 182 Cal. Rptr. 312 (Cal. Ct. App. 1982).
26. Board of Educ., Syracuse City School Dist. v. Regan, 449 N.Y.S.2d 808 (N.Y. App Div. 1982).
27. Board of Educ. of Deer Park Union Free School Dist. v. Carey, 442 N.Y.S.2d 101 (N.Y. Sup. Ct. 1981).

the school aid apportionment plan adopted by the legislature was not unconstitutionally vague.

A Montana case involved the question of whether a high school district was entitled to receive interest and income money from land grants, gifts, estates and other sources despite the fact that it had not held 180 days of pupil instruction as required by law.[28] The court found the statutes governing payments of the interest and income money to be so conflicting as to defy interpretation. The statutes in question were found to be penal statutes and the penal provisions were declared void. The court also upheld payment of reasonable attorney fees and costs incurred by the plaintiff and held that the high school district was entitled to receive its interest and income money.

A Utah case involved disposition of the proceeds of mineral rights on state school lands.[29] The director of the Division of Utah State Lands, the defendant in the case, placed the mineral proceeds in the state school fund. Only interest earned on this fund was placed in the uniform school fund for operational purposes. The state auditor, who was plaintiff, claimed that the proceeds from the mineral rights should be deposited in the uniform school fund. The trial court rejected this contention and an appeal was taken. The Utah Supreme Court ruled that the Jones Act freed federally granted school sections from any restriction or limitation except that they be used for public schools. The court held that Utah, as a sovereign state, was free to place the proceeds from ineral rights in the uniform school fund and so ordered.

A case decided by the Supreme Court of Oregon dealt with whether a tax on the sale of oil and natural gas was to be dedicated to the common school fund.[30] The director of the Oregon Department of Energy assessed a tax based on the number of thermal units of energy sold by energy resource suppliers. Plaintiffs sought invalidation of the order, claiming it violated article VIII, section 2(1)(g) and/or article IX, section 3 of the Constitution of Oregon. The Oregon statute[31] provided for funding the activities of the state department of energy by fees assessed against energy resource suppliers. The statute was later amended to change the basis of assessments to a portion of gross operating revenue. It was held that the proceeds of taxes assessed on the basis of energy resources sold were required under the provisions of the constitution to be dedicated to the common school fund. Consequently, the director's order was invalidated insofar as it involved taxes assessed

28. Missoula High School Legal Defense Ass'n v. Superintendent of Pub. Instr., 637 P.2d 1188 (Mont. 1981).
29. Jensen v. Dinehart, 645 P.2d 32 (Utah 1982).
30. Northwest Natural Gas Co. v. Frank, 648 P.2d 1284 (Or. 1982).
31. OR. REV. STAT. § 469.420.

on the basis of energy resources sold and a directive to assess taxes exclusively on a gross revenue basis was issued.

6.1b Federal Funds for Education

In a case decided by the Third Circuit Court of Appeal, New Jersey and Pennsylvania petitioned for review of final decisions by the United States Department of Education directing that they repay Elementary and Secondary Education Act funds that allegedly were misapplied.[32] The states contended that the Department of Education had no statutory authority to demand repayment of the funds. The court agreed with them, stating:

> We therefore hold that an administrative agency has no authority to order repayment of funds misapplied or misspent by federal grant participants unless Congress, at the time the funds are received, has declared its intention to empower the agency to exercise such a remedy. In the absence of congressional authority, the remedy exists, if at all, only at common law. We further hold that if an agency employing an advance-funding scheme such as that provided for Title I relies on a common-law right to recover misspent funds, it may do so only by maintaining a civil action in a court of competent jurisdiction.[33]

In a case arising in West Virginia an order by the United States Department of Education requiring the state to refund $125,000 it had received under Title I of the Elementary and Secondary Education Act of 1965 was upheld.[34] A county board of education in West Virginia with the approval of the state board of education, had used the money to pay for an administrative office complex occupied by Title I personnel. A subsequent audit of the district's Title I program led to a recommendation that the district be required to refund the $125,000 because it had not been spent for "school facilities" as required by the law. The Fourth Circuit Court of Appeal held that the Secretary of Education was empowered to recover misspent funds, that appropriate appeal procedures had been provided, and that funds granted under Title I of the Elementary and Secondary Education Act could not be used to pay for an administrative office complex.

A case decided by the Supreme Court of Missouri involved the entitlement of a school district to participate in the distribution of forest

32. State of New Jersey, Dep't of Educ. v. Hufstedler, 662 F.2d 208 (3d Cir. 1981).
33. *Id.* at 218.
34. West Virginia v. Secretary of Educ., 667 F.2d 417 (4th Cir. 1981).

reserve funds.[35] A school district sought a declaratory judgment that it was entitled to a mandatory distribution of forest reserve funds derived from the Mark Twain National Forest Reserve. The issue was whether the district, which was adjacent to the national forest, was entitled to a mandatory distribution of the forest reserve funds under section 12.070 of the Missouri statutes. Shannon County, in which the national forest was located, decided to allocate the funds on an acreage formula under which the Eminence School District would not participate. The court noted that federal law[36] allows the states to distribute forest reserve funds in any manner they choose so long as the specified purposes of the statute—to benefit public schools and roads of the county in which the national forest is situated—are met. It is ruled that the Missouri legislature had not specified a particular method of distribution, leaving that to the discretion of the county court. Thus, it concluded that the Eminence School District could legally be excluded in the distribution of the forest reserve funds.

6.1c School Fees

A North Carolina case involved, among other issues, the authority of a public school district to permit the use of a school building without charge after school hours for a program designed to alleviate the problem of the "latch key" child.[37] The plaintiffs in this case were owners and operators of day care centers who sued to enjoin the school board from conducting an extended day care program at an elementary school. The program in question operated after the close of the school day and provided a supervised program in which students could do homework, study, or engage in athletic or artistic activities. Tuition of $15 per day was charged to participants to defray the cost of program staff and the school board provided free use of the elementary school. The North Carolina Court of Appeals affirmed the trial court's decision, holding that the school board was free to permit the use of the building for such purposes, that the constitutional requirement of a uniform public school system was not violated by the program, and that the constitutional requirement that all expenditures of tax dollars be for a public purpose was not violated because the intent of the program was to further the educational achievement of participating students.

35. Eminence R-1 School Dist. v. Hodge, 635 S.W.2d 10 (Mo. 1982).
36. 16 U.S.C. § 500.
37. Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Bd. of Educ., 285 S.E.2d 110 (N.C. Ct. App. 1981).

6.2 SCHOOL TAX ISSUES

6.2a Power to Tax

Several cases arising in California in the wake of the June 1978, voter approval of Proposition 13, which limited the tax on real property, reached the appellate level. In one case a county appealed from a judgment requiring it to provide or fund housing for the superintendent of schools.[38] Since prior to 1965 the county school superintendent had occupied space in a county-owned building. In February, 1965, the county adopted a resolution transferring to the board of education many of its duties and functions. However, the county retained its obligation to provide "housing" for the county superintendent. The county later passed another resolution elaborating the nature of this obligation and providing that the superintendent would continue to occupy the county-owned office space used by the board of education and fixing the rental at $1 per year. After passage of Proposition 13 the county found itself short of revenue and proposed raising the rent from $1 per year to $8,000 per month. The school board responded by filing this action. The trial court held that the county's action setting the rent at $8,000 per month was invalid and enjoined the county from evicting the superintendent or charging the increased rental prior to the end of the fiscal year. The trial court directed the county either to continue to furnish and pay for office space for the superintendent of schools or transfer the necessary funds so that the superintendent could rent space elsewhere. The trial court's action was affirmed by the California Court of Appeals.

A case decided by the Supreme Court of Georgia involved the question of whether or not a county was entitled to a percentage of past due school taxes collected by the tax commissioner.[39] Six legislative acts and three constitutional provisions were involved in the case. Under legislation adopted in 1955 Chathem County was not entitled to a fee for collecting school taxes. In 1980 a statute was adopted setting a fee of one percent in counties with a population of between 190,000 and 300,000. Following a review of the sequence of legislative actions, the court concluded that Chatham County was not entitled to a fee for school taxes it had collected during 1980, but was entitled to a fee of one percent of the school taxes collected effective January 1, 1981, because at that time the county officially reached a population size greater than 190,000.

38. County Bd. of Educ. v. County of San Luis Obispo, 178 Cal. Rptr. 703 (Cal. Ct. App. 1981).
39. Chatham Cty. v. Kiley, 288 S.E.2d 551 (Ga. 1982).

Another Georgia case dealt with the constitutionality of a local amendment authorizing the imposition of excise taxes on alcoholic beverages sold within Habersham County.[40] Georgia permits "local amendments" to its constitution, a fact which permits the Georgia Constitution to differ form one county to another within the state. At its 1980 session the general assembly passed a resolution proposing a local amendment, which was later adopted by a majority of the voters in Habersham County, authorizing the imposition of excise taxes on alcoholic beverages sold within the county with the proceeds to be used for educational purposes. Suit was brought seeking to have the local amendment declared unconstitutional under the due process and equal protection clauses of the fourteenth amendment. The trial court determined that the amendment violated the fourteenth amendment and an appeal was taken. The Georgia Supreme Court reversed the trial court, holding that the local amendment had been properly ratified and the fact that liquor was sold only in incorporated areas in the county did not violate the equal protection guarantees.

A Kentucky case questioned the validity of a utility gross receipts tax adopted by a board of education.[41] The board of education adopted a resolution levying a two percent utility gross receipts tax and an opposing group circulated petitions in opposition to the tax. (If such petitions are properly filed, the result is to suspend the tax levy until the question can be placed on the ballot for voter approval at the next election.) The petitions were delivered to the board of elections, which checked signatures and addresses against voter registration cards and found what it believed to be sufficient correct signatures to place the issue on the ballot. However, when the superintendent of schools and his staff checked the signatures against the voter registration cards they concluded that 466 signatures were not properly signed and certified. The board of education then filed an action seeking an injunction against placing the matter on the ballot. The trial court ruled in favor of the board of education and the Kentucky Court of Appeals affirmed the trial court ruling. It held that the petitions in opposition to the tax were not "verified by affidavit" as required in order to place a question on the ballot for voter approval at the next election.

The Supreme Judicial Court of Massachusetts, acting in response to a request by the state senate, expressed its opinion concerning a proposed constitutional amendment.[42] One part of the proposed amendment

40. Sims v. Town of Baldwin, 290 S.E.2d 433 (Ga. 1982).
41. Board of Elections of Taylor Cty. v. Board of Educ. of Campbellsport Indep. School Dist., 635 S.W.2d 324 (Ky. Ct. App. 1982).
42. *In re* Justice to the Senate, 436 N.E.2d 935 (Mass. 1982).

established requirements for increasing the budget limit for regional school districts which differed from those applicable to school districts in cities and towns. The senate posed the question of whether or not this would deny equal protection of law to students in school districts in cities and towns. The court noted that, based upon its reasoning in *Rodriguez*,[43] the United States Supreme Court does not regard equal access to educational opportunities as a fundamental right and it would not regard students attending regional or local schools to be a suspect class. The court, therefore, considered whether a rational basis existed for the proposed distinction and concluded that such a basis did exist. It held that the proposed differences in treatment would not violate students' right to equal protection of the laws.

In a case decided in Missouri taxpayers brought an action seeking recovery of a portion of the taxes that had been assessed against their property and which they had paid under protest.[44] They contended that an additional school tax levy of forty-eight cents per $100 assessed valuation was valid only for the years 1976 and 1977 because the ballot presented to the voters had provided for the additional tax to be authorized only for a period of two years. However, the school district continued to levy and collect the additional tax after the two year period had elapsed. The school board claimed that it was not necessary to have the authorization for the additional tax renewed and that the plaintiffs, who were corporate taxpayers and not voters, did not have standing to challenge the levy. The Missouri Court of Appeals ruled that the plaintiffs did have standing and held that the plaintifs were entitled to recover the taxes paid under protest. The court commented:

> A reasonable application of Art. X, § 11(c) requires that the tax rate should be extended beyond the time represented to the public .... For intervenor's position to be upheld, we would have to find that the constitution sanctioned the presentation of misleading information to voters. We do not think that in adopting this provision of the constitution, the people of Missouri intended that result or conceived that such might occur. The authorization ... to continue the last approved tax rate can only reasonably mean the last tax rate approved without any time limitation.[45]

The *Newsday* case discussed in preceding yearbooks,[46] reached the Court of Appeals of New York. That court affirmed lower court

43. 411 U.S. 1 (1973).
44. Southwestern Bell Telephone Co. v. Wickliffe, 629 S.W.2d 618 (Mo. Ct. App. 1982).
45. *Id.* at 622.
46. YEARBOOK 1982 at 227.

decisions holding that because the property of Newsday, Inc. was not encompassed by a school board resolution removing an exemption from property taxes as permitted by New York statute, the property in question was entitled to exemption.[47]

In another New York case a taxpayer attempted to prevent a school district from levying taxes for the 1980-81 school year on any tax assessment roll other than the 1980 tax role.[48] Rensselaer County had conducted a county-wide evaluation of real property in 1980. Because the final tax rolls were not available in a timely manner, the school district used the 1979 assessment roll for its school tax levy. The court held that the only requirement was that school districts use the latest of the final assessment rolls, in this case the 1979 roll, and the petitioner was not entitled to relief.

Taxpayers in Troy, New York, sought a refund of real estate taxes that had been levied and collected by the city school district, claiming the taxes were in excess of constitutional limitations.[49] The city moved to dismiss the complaint on the ground that Niagara Mohawk had failed to present a written verified claim to the governing body of the school district as required by the education law. The court rejected this contention, ruling that when a tax statute is alleged to be unconstitutional it may be challenged by proceedings other than those prescribed by the statute as "exclusive." Thus, the court held that letters of protest that had been filed with the tax payments were sufficient to place the city on notice and that it was not necessary for the taxpayer to file a verified claim under these circumstances.

In another New York case a taxpayer and students of the school district appealed a lower court decision[50] which had upheld the authority of a local board of education to adopt an "austerity budget." The case reached the New York Supreme Court after the decision by the New York Court of Appeals in *Levittown* discussed earlier in this chapter. The court in the instant case noted that it was now clear the rational basis test was the appropriate standard to be applied and that "[u]nder the rational basis test, plaintiffs bear the burden, which they have not carried, of demonstrating that the questioned classification has no rational relationship to a legitimate legislative goal."[51] The court held that section 2023 of the education law was constitutional and that adoption of an austerity budget in accordance with the provisions of the statute was proper.

47. Newsday, Inc. v. Town of Huntington, 434 N.E.2d 226 (N.Y. 1982).
48. Sterling Drug, Inc. v. Heintz, 442 N.Y.S.2d 630 (N.Y. App. Div. 1981).
49. Niagara Mohawk Power Corp. v. City School Dist. of City of Troy, 453 N.Y.S.2d 807 (N.Y. App. Div. 1982).
50. YEARBOOK 1982 at 227-28.
51. Brown v. Board of Educ., Whitesboro Cent. School Dist., 453 N.Y.S.2d 883, 885 (N.Y. App. Div. 1982).

A case decided by the Supreme Court of Oregon involved the taxation of submerged or submersible lands owned and leased by the state.[52] The lands in question had been leased by the plaintiff, who claimed the assessment of the lands by Clatsop County was contrary to the statute providing for taxation of state-owned lands leased to taxable individuals[53] and that it violated article VIII, section 5 of the Oregon Constitution. The tax court ruled against the plaintiff and the decision was appealed to the Supreme Court of Oregon. The court held that it was clear from the statute that when public property is put to some private use, whether by lease or sale, it is no longer exempt from taxation. It also ruled that the statute in question did not violate the state constitution.

A taxpayer in Pennsylvania appealed an order of the trial court dismissing his appeal from assessment of school taxes.[54] The taxpayer owned and operated a driving school business. He claimed that after the School District of Erie initiated a driver training program, the number of students attending his driving school was greatly diminished with a resulting loss of income. He contended that the taxes imposed on his real estate for school purposes were being used to subsidize a driver education program which competed directly with his business, and that imposition of such taxes was a denial of due process and equal protection because it discriminated against his vocational pursuit. The court ruled that if the plaintiff were attempting to appeal from his real estate assessment, his action was premature because he had not followed the required statutory route by appealing to the board of assessment appeals. If, however, the plaintiff was attempting to commence an original action seeking a ruling that he was exempt from paying school taxes now and in the future, he had failed to plead a cause of action.

The Pennsylvania Game Commission challenged real estate taxes levied on its property by a school district on the ground that it was exempt from taxation.[55] The commission had acquired title to the property after the 1979 assessment roll was prepared. School taxes subsequently were levied on the property for the fiscal year beginning July, 1979. The court ruled that Pennsylvania provided a statutory remedy to challenge property tax levies and concluded that the remedy provided by statute was the exclusive remedy. Consequently, it decided that it lacked jurisdiction to adjudicate the issue and the complaint was dismissed.

52. Johnson v. Department of Revenue, 639 P.2d 128 (Or. 1982).
53. OR. REV. STAT. § 307.110.
54. Hreha v. Erie Cty. Tax Claim Bureau, 437 A.2d 1084 (Pa. Commw. Ct. 1981).
55. Pennsylvania Game Comm'n v. Luzerne Cty. Tax Claim Bureau, 444 A.2d 783 (Pa. Commw. Ct. 1982).

An another Pennsylvania case, the commonwealth court was called upon to interpret statutory provisions governing a school board's power to tax.[56] The School District of Pittsburgh raised its real property tax by twelve mills and its earned income tax from one percent to two percent to meet its budgetary requirements. The trial court ruled the school district had no power to levy a tax on wages, salaries, commissions, and earned income of residents and the district appealed. The commonwealth court held that the school board's power to tax the earned income of its residents was limited to a tax of one percent and that the school board had no authority to increase by ordinance any legislatively established tax rate limitations.

The Elizabethtown School District imposed a tax on the privilege of obtaining a building permit and engaging in building construction. Persons affected by the tax brought suit claiming the tax was invalid because the building of homes was a manufacturing process exempted under the Local Tax Enabling Act.[57] The commonwealth court found that the construction of homes was not a manufacturing process and thus was not beyond the taxing authority of the school district. The appellants further asserted that a one percent tax was unreasonable and therefore invalid. The court agreed with this contention, holding that a one percent tax on building permits was a levy imposed primarily upon newcomers to the school district and declared the tax to be invalid. The court commented: "Although the record here evidences no conscious exclusionary intention on the part of the authors of this tax, its effect, despite their proper concern for their schools, undeniably is to exempt most of the present residents from an added tax, while collecting it mostly from families coming into the community."[58]

The Moon Area School District established a tax on parking in all nonresidential parking facilities located within the district. The tax was levied at the rate of fifteen percent on each parking transaction and operators were required to obtain a registration certificate at a cost of $10 annually. The constitutionality of the tax was challenged, the trial court declared the tax unconstitutional, and appeal was taken.[59] The plaintiff contended that the tax violated the commerce clause of the United States Constitution but the Supreme Court of Pennsylvania did not agree, holding that the tax did not violate the commerce clause either on the theory that it discriminated against interstate commerce

56. School Dist. of Pittsburgh v. City of Pittsburgh, 443 A.2d 1206 (Pa. Commw. Ct. 1982).
57. Heisey v. Elizabethtown Area School Dist., 445 A.2d 1344 (Pa. Commw. Ct. 1982).
58. *Id.* at 1347.
59. Airway Arms, Inc. v. Moon Area School Dist., 446 A.2d 234 (Pa. 1982).

or on the theory that it was not fairly related to services provided by the school district. The court also ruled the tax did not violate due process on the theory that the school district provided no benefits in exchange for the tax. The court commented: "A taxpayer may not successfully object, on the grounds of the 'benefit theory,' to taxation for a general public use which includes taxes for schools."[60] It was also ruled that the transactions at parking lots were not "retail sales" and thus were not subject to a two percent limitation on sales taxes imposed by the local Tax Enabling Act.

At issue in a case involving the School District of Philadelphia was the question of whether the controlling statute of limitations for filing petitions for a refund of the general business tax imposed by the school district was a two-year or a six-year period.[61] The taxpayer had paid the school district's general business tax but, because it had sustained operating losses between the years 1969-72, it filed with the Department of Collections of the City of Philadelphia for refund of the taxes for this period. The petition for refund was denied for the years 1969-71 but allowed for 1972 on the basis of the two-year statute of limitations set forth in the local tax collection law. The taxpayer, however, claimed that the department of collections was covered by a section of Philadelphia's code which provided for a refund of taxes within six years from the date of payment. The commonwealth court found that the controlling statute of limitations for filing petitions for the refund of a general business tax imposed by the school district was the two-year limitation contained in the state statutes rather than the six year limitation contained in the city code. The court found that the role of the department of collections was merely ministerial; that the legislature had established the position of tax collector within the structure of the school district rather than of the city.

In another Pennsylvania case the purchaser of property which had been sold at a tax sale appealed an order invalidating the tax sale.[62] The property at issue had been purchased by a resident of New Jersey in 1972. Taxes were paid in full through 1975 at which time the owner moved and as a result did not receive his 1976 school tax bill despite the fact that in paying his county and township taxes he circled in red the new address and included a note to the tax collector indicating the change of address. Failure to pay the 1976 school taxes led directly to a tax sale of the proprety in 1978. The property owner did not learn of

60. *Id.* at 244.
61. Bankers Bond & Mortgage Co. v. School Dist. of Philadelphia, 445 A.2d 1379 (Pa. Commw. Ct. 1982).
62. Sabarese v. Tax Claim Bureau of Monroe Cty., 451 A.2d 793 (Pa. Commw. Ct. 1982).

the tax sale until 1980 and petitioned to have the tax sale invalidated on the ground that the notice of the tax sale was not marked "Personal Addressee Only" and therefore did not comply with the requirements of the Pennsylvania Real Estate Tax Sale Law.[63] The trial court invalidated the tax sale and appeal was taken to the commonwealth court. The court affirmed the trial court ruling, noting that the real estate tax sale law explicitly requires that tax sale notices be sent to "Personal Addressee Only," and that this provision must be complied with strictly. The court also ruled that the property owner's notice to the tax collector of his change of address established sufficient cause for invalidation of the tax sale.

The Court of Appeals of Texas affirmed a decision by a district court in a suit in which a taxpayer sought to avoid assessment of property taxes on grounds that they were excessive and discriminatory.[64] The district court ruled in favor of the school district. Upon appeal the taxpayer asserted twenty-two points of error. The appellate court affirmed the district court decision, rejecting all points of error raised by the taxpayer.

In a case decided by the Supreme Court of South Carolina taxpayers brought action seeking relief from the allegedly unconstitutional portions of various acts pertaining to the Marlboro County Board of Education.[65] One appellant also sought refund of property taxes levied by the board which he had paid under protest. One point at issue was whether a statute authorizing the governor to appoint members of the county board of education upon the recommendation of the county's legislative delegation violated the separation of powers provision of the state constitution. The court ruled that it did not. Also at issue was the question of whether the state constitution prohibited an appointed body from exercising the taxing power. The court found that article X, section 5 of the South Carolina Constitution prohibits taxation without representation. It noted that courts in other jurisdictions have held that legislative power to tax cannot be conferred upon a purely appointed body. Thus, it held that the general assembly could not delegate the power of taxation to an appointed body and ruled the act in question unconstitutional to the extent that it conferred arbitrary power to levy taxes upon an appointed board of education. It also ruled that the taxpayer who had paid the taxes under protest was entitled to a refund. The court commented:

63. 72 P.S. § 5860.602.
64. Houston Lighting & Power Co. v. Dickinson Indep. School Dist., 641 S.W.2d 302 (Tex. Ct. App. 1982).
65. Crow v. McAlpine, 285 S.E.2d 355 (S.C. 1981).

> The taxing power is one of the highest prerogatives of the General Assembly. Members of this body are chosen by the people to exercise the power in a conscientious and deliberate manner. If this power is abused, the people could, at least, prevent a recurrence of the wrong at the polls. However, where the power is reposed in a body not directly responsible to the people, the remedy is uncertain, indirect and likely to be long delayed. The unlimited power of taxation attempted to be conferred by the Act under consideration is itself a forceable reminder that the power to fix and levy a tax should only be conferred upon a body which stands as the direct representative of the people, to the end that an abuse of power may be directly corrected by those who must carry the burden of the tax.[66]

6.2b Relationship of School Districts to Other Government Units

A dispute arose in Massachusetts as to whether the mayor of the City of Leominster had authority to reduce the budget requested by the school committee before submitting it to the city council.[67] Prior to 1980, school committees in municipalities other than Boston enjoyed fiscal autonomy. On December 4, 1980, the adoption of "Proposition 2½" limited the amount of money required to be appropriated for public schools to the amount authorized by the local appropriating authority. The school committee had approved a school budget of more than $10 million for fiscal year 1982. The mayor, who was chairman of the school committee, cast the only negative vote. The budget was then presented to the mayor with a request that he submit it to the city council. The mayor refused, however, recommending instead a reduced budget of $8.4 million, and suit was filed seeking a declaration that the mayor was required to submit to the city council the budget proposed by the school committee. The trial court ruled in favor of the mayor and plaintiffs appealed. The plaintiffs claimed that the mayor's failure to recommend the budget exactly as submitted by the school committee deprived the city council of an opportunity to consider and act upon the budget as proposed by the school committee, and also would have the effect of destroying the function of the school committee. The court rejected these contentions, noting that the statute was clear and explicit and that the school committee retained authority to determine expenditures within the total appropriation. The court noted that although it no longer had complete authority to determine its own budget, the school committee retained all of its other broad

66. *Id.* at 358.
67. Superintendent of Schools of Leominster v. Mayor of Leominster, 434 N.E.2d 1230 (Mass. 1982).

powers and responsibilities. The court concluded that the mayor had authority to reduce the budget submitted by the school committee before submitting the total city budget, including the amount proposed for school purposes, to the city council.

In another Massachusetts case the Boston Board of Education sought declaratory and injunctive relief against the City of Boston.[68] The mayor had refused to submit to the city council the school committee's request for a supplemental appropriation. Because the mayor had refused to submit its request for a supplemental appropriation to the city council, the board of education filed suit seeking to have the city required to fund the public schools for the full 180 day school year as required by a Massachusetts law. The city countered by seeking a declaration that the school committee must operate the public schools for 180 days within its statutory appropriation. The trial court determined that the city was required to operate its public schools for 180 days and ordered it to do so, notwithstanding the fact that the school committee's appropriation had been fully expended. The Supreme Judicial Court of Massachusetts agreed with the lower court. It also ruled, that the mayor may require the school committee to spend its funds at a rate which permits the city to meet its obligation to provide the minimum school year; that the city has authority to enforce the budgetary limitations; and that it may seek criminal penalties against school committee members who intentionally spend in excess of the committee's appropriation.

A federal district court in New York was requested by the Buffalo Board of Education to order the mayor and city council of Buffalo to provide additional funds for implementation of previously issued desegregation orders.[69] The school board had requested a budget of $162 million for 1982-83, the mayor recommended $150 million and the city council appropriated $150.6 million. The court, based on the extensive evidence presented, concluded that the funding provided by the city was insufficient to support the court-ordered desegregation program and directed the mayor and common council to make an additional $7.4 million available to the board of education.

6.2c Uses of Revenue

Two Pennsylvania school districts which were being merged with three other districts under a desegregation order sought to rebate surplus tax monies to their taxpayers.[70] The five districts were to

68. Board of Educ. v. City of Boston, 434 N.E.2d 1224 (Mass. 1982).
69. Arthur v. Nyquist, 547 F. Supp. 468 (W.D.N.Y. 1982).
70. Hoots v. Commonwealth of Pa., 535 F. Supp. 1194 (W.D. Pa. 1982).

continue in operation until June 30, 1981. On that date, as the last act before their dissolution, the board of the two school districts passed resolutions transferring any excess funds to special accounts from which "rebates" would be made to taxpayers. The actions were taken specifically to keep the funds from becoming the property of the new consolidated district. Plaintiffs contended that this action violated the federal district court's consolidation order. The court agreed with this contention and issued a permanent injunction to prevent the rebate of surplus tax monies, because such action would violate the court's consolidation order as well as state law.

A Florida case involved the question of whether or not a school board was required to reopen negotiations for the purpose of negotiating salary increases for teachers when additional funds were furnished to the school board as a supplemental appropriation to the Florida Educational Funding Program.[71] The Palm Beach County Classroom Teachers Association appealed an order of the school board of Palm Beach County denying the association's request for an administrative hearing on the allocation and distribution of the supplemental appropriation. The appellate court held that the allocation and disbursement of the funds in question involved a modification of the agency's budget and therefore it was unnecessary for the board to provide the classroom teachers association with a hearing.

Further action occurred in a case involving the use of "Sixteenth Section Funds" in Louisiana.[72] The Tangipahoa Parish School Board deposited its Sixteenth Section Funds in the general fund but kept a record of how much revenue was produced by each ward and disbursed the funds exclusively to schools within the ward that produced them. The plaintiffs lived in a ward that did not contain sixteenth sections and sought to have the funds utilized for the equal benefit of all schools within the parish. The Louisiana Supreme Court ruled that Sixteenth Section Funds are to be placed in the current school fund and used for general school purposes. The court commented:

> 'General school purposes' is left to the discretion of duly elected school boards, but the policy of this board to disburse Section Sixteen funds to the wards that generated them is contrary to their discretionary use. The spending is not based on needs of parish schools, or general school purposes, but is based solely on the fact the funds were generated within a certain ward. This policy is inconsistent with that of R.S. 17:59 and 41:718, requiring funds to be spent on general school purposes.[73]

71. Palm Beach Cty. Classroom Teachers Ass'n v. School Bd. of Palm Beach Cty., 406 So. 2d 1208 (Fla. Dist. Ct. App. 1981).
72. YEARBOOK 1982 at 233.
73. Cacioppo v. Tangipahoa Parish School Bd., 404 So. 2d 945, 947 (La. 1981).

A writ of mandamus was issued directing the school board to credit all Sixteenth Section revenues to its general fund for the equal use and benefit of all schools within the parish.

School bus drivers in another Louisiana parish challenged the school board's allotment of its sale tax revenue.[74] The tax in question, a one percent sales tax to be used to supplement salaries of school employees, was approved in an election held for that purpose in 1968. Under the allocation formula adopted by the board, eighty-eight percent of the revenue was allocated to certificated personnel and twelve percent to noncertificated personnel. The bus drivers contended that the apportionment should be made on a pro rata basis according to each employee's base salary. The Louisiana Court of Appeals agreed that the proposition passed by the voters left the allocation of the proceeds of the sale tax to the discretion of the board and held that the board did not abuse its discretion by allocating eighty-eight percent of the proceeds to certificated personnel and twelve percent to noncertificated personnel.

A Pennsylvania school board's petition for authorization to issue general obligation bonds was denied by the trial court and the district appealed.[75] The district sought to issue general obligation bonds for unfunded debt. Pennsylvania's Local Government Unit Debt Act requires that an obligation be *due* and *owing* to issue general obligation bonds. The district's liabilities were primarily for teachers salaries earned over the course of the school year but to be paid in July and August after the close of its fiscal year. The trial court found that although the district did have a liability for teachers salaries, this amount would not be due until after the close of the fiscal year. Because the district had failed to establish the first prerequisite for authority to issue bonds, *i.e.*, that the obligations are indeed unfunded debt, the trial court's denial of the district's petition was upheld.

The voters in a Wisconsin school district had voted a tax in the amount of $25 thousand during the years 1966-73 for the purpose of constructing a swimming pool. In 1974 the accumulated funds were appropriated to a sinking fund dedicated to the construction of a pool and an annual levy of $25 thousand was continued for the years 1974-79. In 1979 and in 1980 the voters defeated proposals to issue bonds to raise the additional money needed to build the swimming pool. They also defeated a referendum seeking to transfer the swimming

74. Richland Parish Bus Drivers Ass'n v. Richland Parish School Bd., 420 So. 2d 696 (La. Ct. App. 1982).
75. *In re* Board of School Dirs. of Fort Cherry School Dist., 442 A.2d 1259 (Pa. Commw. Ct. 1982).

pool sinking fund monies to the district's general fund. A district taxpayer sought to have the monies declared "funds on hand" and applied to general expenses; the board of education wanted to use the funds for present and future capital expenditures other than a swimming pool. The district court dismissed the taxpayer's request for an injunction. The Court of Appeals of Wisconsin held that the voters at a school district's annual meeting are authorized to levy a tax for purposes of current or future capital expenditures without corresponding bonded indebtedness, and that unless the electors authorize the transfer of funds dedicated to the construction of a swimming pool, such funds are not available for any purposes other than constructing a swimming pool.[76] An injunction was granted restricting the board of education from using the fund for any purpose other than constructing the pool until the voters approved its use for other purposes.

76. Barth v. Board of Educ., School Dist. of Monroe, 322 N.W.2d 694 (Wis. Ct. App. 1982).